83-288

No.

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IN THE

Supreme Court of the United States

October Term, 1983

Albert A. Blanck

Petitioner,

v.

(Maj. Gen.) CHESTER M. McKEEN (USA RET'D)
(Col.) PHILIP P. COLE (USA RET'D)
PAUL CYR

Respondents,

Petition for a Writ of Certiorari To
The United States Court of Appeals
For the Fourth Circuit

PETITION

Albert A. Blanck
Petitioner Pro Se
Post Office Box 1332
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August 1983

QUESTIONS PRESENTED

I

May a court, consistent with due process, in a case involving a "federal question" to enforce federally created "equitable rights" dismiss the case, summarily "from the bench" based upon non-conclusive, contradictory and inconsistent findings by the court as to the cause of action and which ruling adopts the respondents' catch-all motion for dismissal included in their brief of July 7, 1982, page 2, which asserts that; "(4) Whatever the nature of the cause of action, it should be barred by the statute of limitations". (underlines added)

II

May a court, consistent with due process, in a case involving a "federal question" to enforce federally created "equitable rights", dismiss the case summarily "from the bench" when there are genuine issues as to material facts and there are triable issues that cannot be determined upon motion.

III

May a court, consistent with due process, in a case involving a "federal question" to enforce federally created "equitable rights", dismiss the case summarily, "from the bench" when it has been asserted by the petitioner that as part of a conspiracy, its members fraudulently concealed certain crucial facts, records and documents thereby precluding the petitioner from bringing

his suit at an earlier date so as to make a judgment against the petitioner on the basis of equitable principles unfair.

IV

May a court, consistent with due process, in a case involving a "federal question" to enforce federally created "equitable rights" dismiss the case, summarily, "from the bench", on the grounds that it is time barred by state law as to statute of limitations when:

(1) There is no significant state interest to be served by absorption of the state law.

(2) There was no consideration given to the Law of the United States in granting or withholding remedies.

(3) There was no consideration given to the interests of the federal system in having uniformity in the federal courts.

PARTIES TO THE PROCEEDING

Petitioner Albert A. Blanck is, and was, at all times relevant hereto, president and the majority stockholder of Futuronics Corporation.

> (a) Futuronics Corporation ("Futuronics"), a New York Corporation, was at various times relevant hereto, engaged in the design and production of electromechanical equipment and systems as a prime contractor with various agencies of the United States Department of Defense. At all times relevant hereto, virtually all of Futuronics' business was with various agencies of the United States Department of Defense. Futuronics Corp. has been operating since January 3, 1975 as a Debtor In Possession (DIP) under Chapter XI of the Bankruptcy Act.

Respondent Major General Chester M. McKeen, Jr., U.S. Army (Retired) was, at various times relevant hereto, Director of Requirements and Procurement of the U.S. Army Material Command in Alexandria, Virginia.

Respondent Colonel Philip Cole, U.S. Army (Retired) was, at various times relevant hereto, Chief of the Battlefield Command and Control Systems Division of the U.S. Army Material Command in Alexandria, Virginia.

Respondent Paul Cyr was, at various times relevant hereto, a civilian employee of the U.S. Army Material Command in Alexandria, Virginia.

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OPINIONS BELOW

The Per Curiam Opinion and Affirmation of the Court of Appeals of the Fourth Circuit is reproduced in Appendix A hereto.

The Order of the United States District Court is reproduced in Appendix B hereto.

JURISDICTION

The opinion of the Court of Appeals (Appendix A) as decided on May 23, 1983. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. Sec. 1254(1).

CONSTITUTIONAL PROVISIONS

Constitution, First Amendment

Congress shall make no law . . . prohibiting . . . . the right of the people . . . . to petition the government for a redress of grievances.

Constitution, Fifth Amendment

No person shall . . . . be deprived of . . . property, without due process of law. . .

STATEMENT OF THE CASE

The instant action arose when the petitioner, in March, 1981 for the first time discovered, via the Freedom of Information Act, Records and Documents which had been concealed and which revealed that the defendants had participated in a conspiracy and formulated a "McKeen Game Plan", (Appendix D), the objective of which was to destroy Blanck and Futuronics Corporation because Blanck had "Blown the Whistle" on their shoddy procurement practices and reported their waste of

millions of dollars in the purchase of useless and defective government equipment and documentation. The "Game Plan" disclosed that the destruction of Blanck and Futuronics was to be accomplished, surreptiously, under the guise of "legitimate contractual actions" and make it appear that the petitioner and Futuronics were incapable of complying with their government contracts. The "Game Plan" included a "smear campaign" to paint Blanck and Futuronics as disreputable and incompetent. The "Game Plan" included the dispatching of "Spear Carriers" who lied and withheld th true facts from the Assistant Secretary of Defense, Congressman Conte, Senator Brooke, the Small Business Administration and the Contract Adjustment Board.

In Jan. 1975, Futuronics filed its contract appeals with the Armed Services Board of Contract Appeals asserting that the government under eighteen contracts with Futuronics had (i) wrongfully withheld progress payments, (ii) failed to equitably adjust the contracts as to

price and delivery, (iii) had furnished defective government material and documentation and (iv) had wrongfully terminated the contracts for default. An action on one contract was filed in the U.S. Court of Claims for breach of contract. These complaints asserted only contractual claims against the government and no assertions were made against the respondents, individually.

During the period of litigation before the ASBCA, 1975 thru 1979, extensive discovery was conducted by the Futuronics attornies and diligent search for all records and documents by the petitioner via the Freedom of Information Act (FOIA). The "Game Plan" documents disclosing the actions of the "Spear Carriers" and the respondents were never produced.

In Jan. 1978 the ASBCA directed the government to settle all contract claims asserted by Futuronics. Futuronics was fully vindicated in their contract claims. However, neither the petitioner or Futuronics were made whole by the

settlement. Futuronics still is in Chapter XI, trying to become a viable corporation and the petitioner's reputation and property have been destroyed.

The discovery of respondents' acts came about despite respondents' attempts to conceal what transpired from 1970-1979. Early in 1979, a subcontractor of Futuronics in relation to his claim against the government filed a Freedom of Information Act request for access to all government agency records pertaining to Futuronics' litigation against the government. Futuronics granted permission to make its records available on condition that it too, could review all records. In March 1981, documents were produced which should have been produced to Futuronics, at least, as early as 1975, and which revealed the respondents' participation in a conspiracy, "Game Plan" and the acts of the "Spear Carriers".

On Feb 23, 1982, the petitioner filed its complaint in the instant action in the U.S. District Court for the

Eastern District of Va., Alexandria Division.

The respondent filed a brief in support of its answers and a motion to dismiss or in the alternative for Summary Judgment on July 7, 1982. The petitioner on July 19, 1982 filed its opposition to the respondents Motion with an Affidavit of Blanck.

On July 23, 1982 a hearing was held before Judge Albert Bryan, Jr., at which time he granted, from the bench, the respondents motion to dismiss the case.

The petitioner, on Aug. 10, 1982, filed Notice of Appeal to the Fourth Circuit Court of Appeals. On Nov. 19, 1982 the respondent filed its brief with the U.S. Court of Appeals for the Fourth Circuit.

The petitioner filed its reply brief with the U.S. Court of Appeals for the Fourth Court on Dec. 20, 1982.

On Apr. 14, 1983, oral arguments were presented to the U.S. Court of Appeals for the Fourth Circuit.

On May 23, 1983, the U.S. Court of Appeals for the Fourth Circuit decided,

Per Curiam, to affirm the judgment of the U.S. District Court.

RULINGS BELOW

I

THE DISTRICT COURT RULING TO SUMMARILY DISMISS THE PETITIONER'S CASE IN ACCORDANCE WITH F.R. CIV. P. 12 (b) (6) IS CONTRADICTORY, INCONSISTENT AND IS IN CONFLICT WITH THE LIBERAL RULES AS TO SUFFICIENCY OF A COMPLAINT SO AS TO MAKE IT A RARE CASE AS IN WHICH A MOTION ON THIS GROUND SHOULD BE GRANTED.

The U.S. District Court, from the bench, dismissed the case, pursuant to FR Civ P 12(b)(6), in accordance with the respondents' motion to dismiss having found that:

1. "Although couched in terms of constitutional torts the complaint asserted no more than common law torts, liability for which defendants are immune".

2. "The complaint also appears to assert contractual claims over which this court would have no jurisdiction..."

3. "The motion of the defendants to dismiss because the action is barred by the applicable five year limitation is granted, it appearing that the last act of any defendant or any act chargeable to any defendant causing harm to the plaintiffs occurred more than 5 years prior to the time this action was filed, and that at least as early as 1976 the plaintiffs were aware of the substance of the claims of tortious conduct of which they now complain, although they may not have known the details thereof or all of the persons involved therein".

The court should not have dismissed the case because it was time barred by the Statute of Limitations because:

(i) Only common law torts were found to be asserted by the petitioner for which the court found, the respondents were immune; (ii) The court found that it "appears" that the petitioner asserted contract claims over which the court had no jurisdiction.

Thus, while having found that the petitioner's complaint had not asserted Constitutional Torts, the District Court, nevertheless, dismissed the action on the finding that the petitioner was "aware of the substance of the claims of tortious conduct" more than 5 years prior to the time this action was filed, and the "action is barred by the applicable 5 year limitation".

These diverse rulings and inconsistent findings do not justify a "Summary Judgment" which is recognized as a harsh remedy; (Vette Co. v Aetna Casualty and Surety Co., 612 F.2d 1076 (8th Cir. 1980); Penne v Greater Minneapolis Board of Realtors, 604 F.2d

1143, 1148 (8th Cir. 1979); United States v Bosurge, 530 F2d 1105, 1110 (2d Cir. 1976).

The District Court also found, "that at least as early as 1976 the plaintiffs were aware of the substance of the claims of tortious conduct of which they now complain, although they may not have known the details thereof or all of the persons involved therein". (underlines added)

The District Court ignored that the point at which the statutory period commences is a matter governed by federal common law. Campbell v Haverhill, 155 U.S. 610, 15 S.Ct. 217, 39 L.Ed 280 (1895); Holmberg v Armbrecht, 327 U.S. 392, 66 S.Ct. 582 90 L.Ed. 743 (1945); Tomera v Galt, 511 F.2d 504, 509 (7th Cir. 1975). The 4th Circuit has followed the general rule that the point at which a claim accrues is governed by federal, not state, law. Bridgford v U.S., 550 F.2d 978, 981 (4th Cir. 1977); Portes v U.S., 483 F.2d 670, 672 (4th Cir. 1973).

In a malpractice case brought under the Federal Tort Claims Act, the U.S. Supreme Court identified the time of accrual of the cause of action. U.S. v Kubrick, 44 U.S. 111, 100 S.Ct. 352,62 L.ED 2d 259 (1979). The Court distinguished between plaintiff's knowledge of the "factual predicate for a malpractice claim," i.e., "the fact of his injury [and] its cause, "and awareness that a legal wrong had been done. See Kubrick, 444 U.S. at 122, 100 S.Ct. at 359 and n.8.

By making this distinction, the Supreme Court rejected the standard which would allow the Statute of Limitations to commence running before the plaintiff was or should have been aware of the causal connection between his injury and the acts of defendants.

Until the plaintiff is in possession of the "critical facts that he has been hurt and who has inflicted the injury," id., the statute of limitations does not commence to run. Lavelle v. Listi, 611 F.2d 1129, 1131 (5th Cir. 1980).

The Court of Appeals in the 4th Circuit has identified the time of accrual of a cause of action as precisely that time when the claimant believes he has a possible cause of action, not just when an injury appears. "Therefore until a claimant has had a reasonable opportunity to discover all of the essential elements of a possible cause of action--duty, breach, causation, damages--his claim..does not accrue." (Court's emphasis). Bridgford, supra, at 981-982.

The Complaint is clear that petitioner did not learn all of the elements of a possible cause of action until Mar. 1981. Whether or not this knowledge could have been obtained earlier is a factual question, and it must be assumed that it was obtained with reasonable diligence. The policy of the Court has been to guard against a premature application of a statute of limitations until such time as a petitioner has a reasonable belief that he has a cause of action against the

prospective defendants. (Schnurman v. U.S., 490 F. Supp. 429,435 (E.D.Va. 1980).

The "discovery rule" as to accrual of a cause of action is not limited to medical malpractice cases, rather, any plaintiff who is blamelessly ignorant of the existence or cause of his injury shall be accorded the benefits of the discovery rule. Stolson v. U.S., 629 F.2d 1265, (7th Cir. 1980). Each case must be thoroughly examined to determine when the plaintiff had knowledge of the "critical facts" regarding his injury. On this date, his claim accrues, and the plaintff is charged with the duty of promptly investigating and presenting his claim. "The rationale of Kubrick is broad enough to warrant, indeed compel, its application to a normal practice case if the plaintiff is ignorant of the critical facts concerning his injury, Liuzzo v. U.S., 4485 F. Supp. 1274, 1281 (E.D.Mich. 1980).

It is apparent that the District Court in its "haste" to dismiss the instant case adopted the respondents

(defendants) "catch all" motion that "(4) Whatever the nature of the cause of actions, it should be barred by the statute of limitations." (underlines added)

The Circuit Court agreed and affirmed "on that ground only" that the petitioner's claims were barred by the applicable statute of limitations; despite the fact that the District Court found that the petitioner had not asserted a cause of action claiming Constitutional Torts.

The Circuit Court also found "that in 1976":

(1) "Appellants knew that the government's technical data package was allegedly inadequate".

(2) "that adjustments had been denied".

(3) "that progress payments had been withheld".

(4) "they knew then of the DOD internal memorandum concerning the decision to 'step back and let the contractor go bankrupt'".

The Circuit Court found that all of the foregoing were "alleged constitutional torts". However, these very same allegations were found by the District Court to be "Contractual claims

over which the court has no jurisdiction" or "although couched in terms of constitutional torts the complaint asserts no more than common law torts for which the defendants are immune".

In furtherance of these convoluted, inconsistent, and contradictory findings the Circuit Court found that Appellants allegations of tortious conduct are necessarily intertwined with their contractual claims before the Armed Services Board of Contract Appeals". (underlines added).

The petitioner respectfully submits that there never was nor could there have been an "intertwining" of contract claims with Constitutional Tortious claims.

Finally, ignoring Bridgford and all the case law recited, supra, the Circuit Court relied upon Fitzgerald v. Seamans, 553 .2d 220 (DC Cir. 1977) as precedent for the findings that "Futuronics in 1976 before the Armed Services Board of Contract Appeals and in the Court of Claims. . . were 'on notice' at least by that time, of appellee alleged constitutional torts". The Circuit

Court, however, failed to consider the full findings which were cited in Nixon v Fitzgerald,. opinion No. 79-1738 (SC June 1982) as follows:

"The District Court dismissed the action under the District of Columbia's 3 year statute of limitations, Fitzgerald v. Seamans, 384 F. Supp. 68 (D.D.C. 1974), and the Court of Appeals affirmed as to all but one defendant, White House aid Alexander Butterfield; Fitzgerald v. Seamans, 553 F.2d 220 (CADC 1977). The Court of Appeals reasoned that Fitzgerald had no reason to suspect White House involvement in his dismissal at least until 1973. In that year, reasonable grounds for suspicion had arisen, most notable through publication of the internal White House memorandum in which Butterfield had recommended that Fitzgerald at least should be made to "bleed for a while" before being offered another job in the Administration. Id., at 225,229. Holding that concealment of illegal activity would toll the statute of limitations, the Court of Appeals remanded the action against Butterfield

for further proceedings in the District Court.

The courts below failed to consider that the instant cause of action set forth in the Complaint is well pleaded, and it is substantially similar to that set forth in Harlow v. Fitzgerald, 457 U.S_____, 102 S.Ct. 2727 (1982) which involved a case of action brought under the First Amendment. Blanck was singled out by defendants as a "whistle blower" who had to be silenced; Fitzgerald also was the target of ill-meaning government officials intent on covering up the embarrassing story he was telling.

The defendants in Harlow, White House aides Harlow and Butterfield, allegedly conspired to fire Fitzgerald for revealing shoddy purchasing practices of the government. The District Court, as noted in Harlow, supra at 2732, denied the defendants' motion for summary judgment and upheld the legal sufficiency of Fitzgerald's claims under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). Defendants' filed motions to

dismiss or, in the alternative, for summary judgment; this is the same motion filed by respondents in the instant case. That motion was denied on the basis that "Plaintiff" states a cause of action under the First Amendment to the U.S. Constitution. See Fitzgerald v. Butterfield, No. 74-178 (D.D.C., April 27, 1979) (Order denying Motions to dismiss or in the alternative for summary judgment) (Order set forth herein below at Appendix C).

The court's dismissal in the instant case appears even more erroneously premature when viewed against the facts in Harlow. At the conclusion of 8 years of discovery "the supporting evidence remained inferential."; Harlow, supra, at 2730. All that Fitzgerald was able to establish was that Harlow had conversed with other principal decision-makers, including Richard Nixon, and that Nixon had recalled that Harlow was "all for canning" Fitzgerald. Butterfield had circulated a memorandum stating that Fitzgerald planned to publicize shoddy purchasing practices. However, no direct

link of Butterfield to any decision-making had been established. Harlow, supra, at 2730-2732.

Compared to Harlow, where 8 years of discovery had been conducted, the facts in the instant case establish a definitive connection between respondents herein and the torts alleged. This connection has been made before any formal discovery has been conducted.

The torts alleged herein and pleaded clearly in the Complaint did not arise from previously litigated contract claims. This is a Bivens cause of action arising under the First and Fifth Amendments. Harlow provides substantial precedent for judicial recognition of the validity of these claims.

II

THERE ARE GENUINE ISSUES AS TO MATERIAL FACTS AND THERE ARE TRIABLE ISSUES THAT CANNOT BE DETERMINED ON MOTION WHICH MANDATE THAT THE SUMMARY JUDGMENT OF THE COURT WHICH DISMISSED THE PETITIONER'S CASE SHOULD BE REVERSED:

"Rule 56 of the Federal Rules of Civil Procedure provides that disputed questions of fact ordinarily may not be decided on motions for summary judgment.

The Rule states that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56 (c). In determining whether summary judgment is proper, a court ordinarily must look at the record in the light most favorable to the party opposing the motion, drawing all inferences most favorable to that party. E.G., Poller v. Columbia Broadcasting System, Inc., 368 U.S. 464, 473 (1962)." Harlow et al v. Fitzgerald, Opinion No. 80-945 (S.Ct.)

The following, are, inter alia, the disputed Material Facts and Triable Issues:

1. Were constitutional torts asserted in the instant case?

2. When were all the elements of a possible cause of action involving Federal Questions known to the petitioner?

3. Did the petitioner exercise due diligence so as to discover "all the elements" of the tortious complaint at the earliest date?

4. At what point does the statute of limitations period commence and in the instant case which concerns Federal Questions, is it governed by federal common law?

5. Are the following claims asserted by the petitioner in his claims before the ASBCA and U.S. Court of Claims, Constitutional Torts as found by the Circuit Court, or purely Contract Claims as contended by the petitioner and as found by the District Court?

(a) "Appellant knew that the government's technical data package was allegedly inadequate."

(b) "that adjustments had been denied".

(c) "that progress payments had been withheld".

(d) "they knew then of the government memorandum concerning the decision to step back and let the contractor go bankrupt".

6. Are the allegations of tortious conduct, as found by the Circuit Court, "necessarily intertwined with their contractual claims before the Armed Services Board of Contract Appeals and in its Court of Claims" and should they be "un-intertwined"?

7. Were crucial facts, records, and documents fraudulently concealed from the petitioner until March of 1981?

8. Examination of the "Smoking Pistol", the "Game Plan" document, Appendix D, in itself presents genuine issues of material facts such as: "(a) Sec. bought Game Plan."; "(b) --- must prepare a massive paper."; "(1) Possible Conte meeting today."; "Thinks 'spear carriers' meetings s/b completed (successfully) before such actions."; "Mr. Huggard agrees to try Gen. McKeen approach"; "DCASR...until 'spear carriers' have okayed (or at least not objected to) the McKeen approach".

III

THE COURTS BELOW FAILED TO ADDRESS THE VITAL ASSERTION BY THE PETITIONER THAT CRUCIAL FACTS, RECORDS AND DOCUMENTS WERE FRAUDULENTLY CONCEALED FROM THE PETITIONER, THEREBY PRECLUDING THE PETITIONER FROM BRINGING HIS SUIT AT AN EARLIER DATE WHICH IF FOUND TRUE WOULD MAKE A JUDGMENT AGAINST THE PETITIONER ON THE BASIS OF EQUITABLE PRINCIPLES, UNFAIR.

--

As stated in the Statement of the Case, a Futuronics subcontractor in Jan. 1979, requested permission to review all of the government records pertaining to the Futuronics contracts. Subsequently, in March 1981 documents and records were produced which revealed that: the respondents participated in a conspiracy and what they termed a "Game Plan" to destroy Blanck and Futuronics; the dispatching of "Spear Carriers" to discredit Futuronics and the petitioner at all the agencies cited and the concealment of all documents and records which corroborated the "Whistle Blowing" allegations of Futuronics and Blanck. Neither the District Court or the Circuit Court addressed this issue.

Read into every federal statute of limitations is the equitable doctrine

that in case of defendant's fraud or deliberate concealment of material facts relating to his wrong-doings, time does not begin to run until plaintiff discovers, or by his reasonable diligence could have discovered, the basis of the lawsuit. Holmberg v. Armbrecht 1327 US 392, 66 S. Ct. 582; Fitzgerald v. Seamans, 53 F. 2nd 220, 228 (D.C. Cir. 1977).

This discovery of facts standard (with a diligence requirement) has been applied, in securities cases dealing with fraudulent or deceptive practices, in medical malpractice cases, in cases involving violation of a duty to bargain in good faith (see cases cited in Fitzgerald, at 228, n. 12, n. 13, n. 14), in antitrust cases, Crummer Co. v. DuPont, 255 F. 2nd 425 (5th Cir. 1958), and in cases brought under 42 U.S.C. Section 1983, Cox v. Stanton, 529 F. 2nd 47 (4th Cir. 1975).

In cases where concealment by Defendants has tolled the statute of limitations there has been some type of fraudulent behavior by Defendants. In

the first type, the most common, the fraud goes undiscovered even though the defendant after commission of the wrong does nothing to conceal it and the plaintiff has diligently inquired into its circumstances. The Plantiffs' due diligence is essential here. Tomera v. Galt, 511 F. 2nd 504, 509 (7th Cir. 1975); Morgan v. Koch, 419 F. 2d 993 (7th Cir. 1969). In the second type, the fraud goes undiscovered because the defendant has taken positive steps after commission of the fraud to keep it concealed. This type of fraudulent concealment tolls the limitations period until actual discovery by the plaintiff. Tomera, supra, at 510 and cases cited therein. The allegations in the instant Complaint are sufficient under either standard.

But the presence of fraud by the respondents themselves is not a sine qua non for a tolling of the statute of limitations for reasons of concealment.

An exception to the rule that the fraudulent concealment alleged must be committed by the defendant who raises the

bar of the statute was carried out in the case of Bailey v. Glover, 21 Wall. 342,348,88 U.S. 342, 348,22 L.Ed.636 (1875):

"Where the party injured by the fraud remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered, though there be no special circumstances or efforts on the part of the party committing the fraud to conceal it from the knowledge of the other party."

Elaborating on this exception nearly 100 years later, the court in Puttkammer v. Stifel, Nicholaus and Co., 367 S. Supp. 495, 497 (N.D.111.1973), held:

One element of the Bailey doctrine, then, is that if Defendants' activities are of such a nature that they conceal themselves, then even though the Defendants may have taken no steps to conceal them, there will be a tolling of the statute." See also Houlihan v. Anderson-Stokes, Inc. 434 F. Supp. 1324, 1328, n.1 (D.D.C. 1977).

The "self-concealing" exception is similar to that in Crummer where the Court found the information leading to the accrual of the cause of action to be inherently concealing. Assuming, arguendo there was no active fraud by the respondents, the Complaint satisfies both the "self-concealing" and "inherently

concealing" standards. Documents pertaining to defense contracts are necessarily withheld from the public domain as a matter of course. This concealment was challenged by a Freedom of Information Act request, which was made under petitioner's auspices. The information from this request gave petitioner for the first time, a sufficient basis for this cause of action. That information was received in Mar. 1981. That is when the cause of action accrued. Under the Va. statute of limitations, - either 2 years for personal injury or 5 years for injury to property, this suit was filed in a timely fashion.

IV

THE FEDERAL JUDICIAL SYSTEM IS AN INDEPENDENT SYSTEM FOR ADMINISTERING JUSTICE TO LITIGANTS WHO PROPERLY INVOKE ITS JURISDICTION AND IN THE INSTANT CASE THE OUTCOME SHOULD NOT BE CONTROLLED BY STATE LAW.

In D'Oench, Duhme & Co. v. Federal Deposit Insurance Corp., Justice Jackson said: "A federal court sitting in a non-diversity case such as this does not sit as a local tribunal. In some cases, it

may see fit for special reasons to give the law of a particular state highly persuasive or even controlling effect, but in the last analysis its decision turns upon the law of the U.S., not that of any state. Federal law is no juridicial chameleon changing complexion to match that of each state wherein lawsuits happen to be commenced because of the accidents of service of process and of the application of the venue statutes. It is found in the federal Constitution, statutes, or common law. Federal common law implements the federal Constitution and statutes, and is conditioned by them. Within these limits, federal courts are free to apply the traditional common-law technique of decision and to draw upon sources of the common law in cases such as the present."

On some issues in private federal question cases, there may be compelling reasons for ignoring state law and following an independent federal rule, as where Congress has clearly indicated a substantive policy it wishes to have followed, or there are indications of a

leaning toward uniformity and there is no significant state interest to be served by absorption of the state law as the rule of decision.

There also appears to be opinions which suggest that the doctrine of "equitable remedial rights" persists and that a federal court sitting in equity is free to grant or withhold remedies without regard to what a state court would do in a similar case. Guaranty Trust Co., of N.Y. v. York, 65 S. Ct. at 1468-1469. As an extension of the doctrine that federal law is controlling, is the decision that federal law governs in a diversity action by a subcontractor against a government prime contractor; American Pipe and Steel Corp. v. Firestone Tire & Rubber Co., 292 F. 2d 640.

Based on the foregoing, the instant case warrants consideration by the U.S. Supreme Court since an important question of federal law has not been decided by the lower courts and rather than address the principal issues, the lower courts, inter alia, dismissed the case,

summarily, ruling that it was time barred by state statute of limitations.

CONCLUSIONS AND REASONS FOR GRANTING WRIT

The instant case is not an insubstantial lawsuit. There are striking parallels between the events herein and those of the noted and courageous "whistle blower", A. Ernest Fitzgerald, see Fitzgerald v. Seamans, 553 F. 2d 220 (D.C. Cir. 1977). In both cases government officials went well beyond the scope of their official duties to punish a citizen who exposed their "shoddy" procurement practices and waste of millions of dollars of government funds. See, Harlow v. Fitzgerald, 457 U.S.____, 102, S. Ct. 2727 (1982).

As pronounced in the Dissenting Opinion in re Nixon v. Fitzgerald:

"The principle that should guide the Court in deciding this question was stated long ago by Chief Justice Marshall: 'The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury.' Marbury v. Madison,

1 Cranch 137, 163 (1803). Much more recently, the Court considered the role of a damages remedy in the performance of the courts' traditional function of enforcing federally guaranteed rights: 'Historically, damages have been regarded as the ordinary remedy for an invasion of personal interests in liberty'. Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388, 395 (1971). To the extent that the Court denies an otherwise appropriate remedy, it denies the victim the right to be made whole and, therefore denies him 'the protection of the laws.'"

It is respectfully submitted that the lower courts, in summarily dismissing the instant case, have "denied" the petitioner "the right to be made whole" and, therefore, "denies" him "the protection of the laws"; in re Nixon v. Fitzgerald, (dissenting) supra.

For all of the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Albert A. Blanck
Post Office Box 1332
Roslyn Heights, N.Y.,
11577
Pro Se

APPENDIX

APPENDIX A

Opinion, Per Curiam, dated May 23, 1983
U.S. Court of Appeals for the 4th Circuit

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

O. 82-1730

Albert A. Blanck,
Futuronics Corporation,

Appellants,

v.

(Maj. Gen.) Chester M. McKeen, (Jr.),
(U.S.A. Ret'd), (Col.) Philip Cole,
(U.S.A. Ret'd), Paul Cyr,

Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria.
Albert V. Bryan, Jr., District Judge.

Argued:April 14,1983 Decided:May 23,1983

Before HALL and MURNAGHAN, Circuit Judges; and FOX,* District Judge.

Robert F. Condon (Finley, Kumble, Wagner, Heine, Underberg & Casey; Thomas J. Walsh on brief) for Appellants; Jenny A. Sternbach (J. Paul McGrath, Assistant Attorney General; Elsie L. Munsell, United States Attorney, Barbara L. Herwig, Civil Division, Appellate Staff, Department of Justice on brief) for Appellees.

*Honorable James C. Fox, United States District Judge for the Eastern District of North Carolina, sitting by designation.

PER CURIAM:

Futuronics Corporation and Albert A. Blanck, its president, appeal from the district court's order dismissing their complaint against Maj. Gen. Chester M. McKeen, Jr., Col. Philip Cole and Paul Cyr. The district court ruled, inter alia, that appellants' claims were barred by the applicable statute of limitations. We agree and affirm on that ground alone.

I.

Between 1968 and 1974, Futuronics was awarded eighteen contracts with various agencies of the Department of Defense (DOD) representing $37 million of business. By 1973, problems had arisen regarding Futuronics' inability to meet the production and delivery schedules under some of the contracts.[1] Futuronics' continued failure to perform

led to termination of the contracts, and on January 3, 1975, Futuronics filed a petition under Chapter XI of the Bankruptcy Act.

Futuronics appealed the termination of its contracts to the Armed Services Board of Contract Appeals. In its administrative complaint, dated October 18, 1976, Futuronics alleged that DOD officials caused its financial destruction by terminating the contracts. The complaint quotes language from an internal DOD memorandum which states in part that: "It was determined that it was

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[1]Performance of these contracts by Futuronics was dictated by specifications and technical data, which were prepared and furnished by the government, as well as by the utilization and inclusion in the end products of government samples and government-furnished property. Delivery dates and specific periods of performance were established by the government, with the government warranting that the property furnished by it was satisfactory for its intended purpose and application.

in the Government's best interest to step back and let the contractor go bankrupt." After preliminary discovery and pre-hearing conferences, the Board consolidated Futuronics' appeals into one proceeding "for trial and resolution of all subsidiary issues as well as the ultimate issue of whether the Government caused [Futuronics'] bankruptcy.

On November 10, 1976, while Futuronics' claims were still pending before the Board, Futuronics instituted an action against the government for breach of one of its contracts in the United States Court of Claims. That complaint alleges that the government wrongfully withheld progress payments due under the contract, refused to negotiate adjustments to the contract, knew that termination of the contract "would seriously impact on [Futuronics'] ability

to continue as a viable business concern," and that Futuronics' inability to satisfy the contract requirements was due to the poor technical data furnished by the government.

In this action filed on February 23, 1982, Futuronics claims that in March of 1981, the government released internal DOD correspondence and memoranda, which allegedly should have been given to Futuronics as early as 1975 under the Freedom of Information Act, pursuant to a request by a subcontractor of Futuronics. According to appellants, these documents establish that it was "the McKeen approach" or the "game plan" to retaliate against appellants for exposing gross misfeasance in the government's technical data package, to drive Futuronics out of business and destroy the business reputation of Blanck, and to impede all

investigations into this matter by the means of a deliberately planned cover-up. These documents include the DOD internal memorandum from which Futuronics quoted in its 1976 complaint before the Armed Services Board of Contract Appeals.

Appellants instituted this action seeking $36 million in compensatory and punitive damages against McKeen, Cole, and Cyr, in their individual capacities, for allegedly violating their constitutional rights by conspiring to destroy the business of Futuronics and the business reputation of Blanck. The complaint alleges that appellees knew that the government's technical data package was inadequate and in order to cover up this matter, formulated a "game plan" to withhold progress payments, to disseminate false and misleading information, and to withhold false

documents, thereby causing Futuronics to file for bankruptcy. Appellees moved to dismiss the complaint, and the district court granted their motion in part because appellants' claims were barred by the applicable statute of limitations. [2]

II.

On appeal, appellants contend that their cause of action did not accrue until March, 1981, and that, therefore, this action is timely. We disagree.

Appellants allege that their cause of action arises under the First and Fifth Amendments and that jurisdiction is based on 28 U.S.C. Sec. 1331 (a). Since neither the amendments nor the federal statute contain a statute of limitations,

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[2] Because matters outside the pleadings were presented to and not excluded by the district court, we treat the motion as one for summary judgment. F.R. Civ. P. 12 (b).

the most closely analogous state statute of limitations applies. Johnson v. Railway Express Agency, 421 U.S. 454, 462 (1975).

We find, and the parties do not dispute, that the statute of limitations applicable to this case is Va. Code Sec. 8. Ø1-243 (197 Rep. Vol.), which establishes a two-year limitations for personal injury actions and a five-year limitations for property damage actions. In addition, we find that the district court correctly determined that the time when a cause of action accrues is governed by federal, not state, law. Campbell v. Haverhill, 155 U.S. 61Ø (1895); Bridgford v. United States, 483 F.2d 67Ø, 672 n.4 (4th Cir. 1973). Furthermore, the district court was correct in holding that the statute of limitations does not begin to run until

the plaintiff discovers, or by the exercise of due diligence should have discovered, the facts forming the basis of his cause of action. Holmberg v. Armbrecht, 327 U.S. 392, 396-97 (1946); Fitzgerald v. Seamans, 553 F.2d 220 (D.C. Cir. 1977).

In Fitzgerald v. Seamans, supra, the plaintiff brought suit in 1974 against federal officials alleging that they conspired to violate his constitutional and statutory rights by wrongfully terminating his employment with the Air Force in 1970 in retaliation for his congressional testimony. The plaintiff contended that his action was not barred by the applicable three-year statute of limitations because the defendants fraudulently concealed their unconstitutional acts. The District of Columbia Circuit held that Fitzgerald's

action was time-barred since documents filed by him in a 1970 proceeding before the Civil Service Commission "demonstrate[d] that, by 1970, he had facts sufficient to put him on notice of the conspiracy by the Air Force appellees to retaliate against him for his congressional testimony." Id. at 228.

As in Fitzgerald v. Seamans, supra, documents filed by Futuronics in 1976 before the Armed Services Board of Contract Appeals and in the Court of Claims reveal that appellants were "on notice," at least by that time, of appellees' alleged constitutional torts. In 1976, appellants knew that the government's technical data package was allegedly inadequate, that adjustments had been denied and that progress payments had been withheld because Futuronics alleged this in its complaint

filed in the Court of Claims on November 10, 1976. They knew then of the DOD internal memorandum concerning the decision "to step back and let the contractor go bankrupt" because Futuronics quoted from it in its complaint dated October 19, 1976, before the Armed Services Board of Contract Appeals. They knew in 1976 that Futuronics was bankrupt because Futuronics filed a petition under Chapter XI of the Bankruptcy Act on January 3, 1975. They knew that the ultimate issue before the Armed Services Board of Contract Appeals was "whether the Government caused [Futuronics'] bankruptcy because the Board consolidated all of Futuronics' appeals into one proceeding for trial and resolution of that issue.

In the present action, the gravamen of the complaint is that appellees

conspired to cause the financial destruction of Futuronics. Appellants' allegations of tortious conduct are necessarily intertwined with their contractual claims before the Armed Services Board of Contract Appeals and in the Court of Claims. It is not necessary that appellants knew, in 1976, all of the persons involved in, or all of the details of, appellees' alleged torts. Appellants' action is time-barred as long as they were "on notice" of the conduct about which they complain. Id. at 229. We hold that appellants had, by 1976, sufficient information to put them on notice of the instant cause of action as time-barred under the applicable statute of limitations. Because of our holding, we find it unnecessary to reach the other issued raised on appeal.

Accordingly, the judgment of the district court is affirmed.

A F F I R M E D.

APPENDIX B

Order, July 23, 1982; Judge Albert Bryan, Jr., U.S. District Court for the Eastern District of Virginia, Alexandria, Virginia

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

ALBERT A. BLANCK, et al.,
Plaintiffs

CIVIL ACTION No.
82-152-A

V.
CHESTER M. McKEEN, JR.,
et al.,
Defendants

O R D E R

For the reasons stated from the bench, it hereby ORDERED that:

1. The motion of the defendants to dismiss for failure to state a claim upon which relief can be granted, pursuant to F.R. Civ.P. 12(b) (6), it is granted, the court being of the opinion that although couched in terms of constitutional torts the complaint asserts no more than common law torts, liability for which the defendants are immune. The complaint also appears to assert contractual claims over which this court would have no

jurisdiction and which have already been adjudicated or should be adjudicated in the Court of Claims.

2. The motion of the defendants to dismiss because the action is barred by the applicable five year limitation is granted, it appearing that the last act of any defendant or any act chargeable to any defendant causing harm to the plaintiffs occurred more than five years prior to the time this action was filed, and that at least as early as 1976 the plaintiffs were aware of the substance of the claims of tortious conduct of which they now complain, although they may not have known the details thereof or all of the persons involved therein.

3. This action is dismissed.

/s/Albert V. Bryan, Jr.
United States District Judge

Alexandria, Virginia
July 23rd, 1982

APPENDIX C

Fitzgerald v. Butterfield,
No. 74 - 178 (D DC, April 27, 1979)

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74-178

A. Ernest Fitzgerald,

Plaintiff,

v.

ALEXANDER P. BUTTERFIELD,
H. ROBERT HALDEMAN
RICHARD M. NIXON,
BRYCE N. HARLOW,

Defendants.

ORDER
(Filed April 27, 1979)

Upon consideration of the defendants' motions to dismiss or, in the alternative, for summary judgment, the opposition thereto, the entire record herein, and the oral arguments of counsel, it is hereby

Ordered that the defendants' motions to dismiss or in the alternative for summary judgment are denied in the following respects:

A. Causes of Action

1. Plaintiff states a cause of action under the First Amendment to the United States Constitution based on defendants' alleged retaliation for plaintiff's having exercised his rights of free speech and petition. Mount Healthy City School Dist. Bd. of Education v. Doyle, 429 U.S. 274, 283-84 (1977); Perry v. Sindermann, 408 U.S. 593, 596-98 (1972). In addition, a damage remedy lies for such a violation. Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971); Dellums v. Powell, 566 F.2d 167, 194-96 (D.C. Cir. 1977), cert. denied, 46 U.S.L.W. 3803 (U.S. July 3, 1978).

2. Plaintiff states a cause of action for damages under 5 U.S.C.A. § 7211 (1979 pocket part). See Cort v. Ash, 422 U.S. 66, 78 (1975). The

plaintiff is part of the class for whose especial benefit the statute was enacted. See Act of Aug. 24, 1912, ch. 389, & 6, 37 Stat. 555 (provision originally placed at end of section protecting civil servants from capricious removals); 48 Cong. Rec. 4493, 5625-27, 5633-36, 10671-75 (1912). There exists no indication of a legislative intent to deny a private remedy under the provision, and implication of such a remedy is not inconsistent with the underlying purposes of the legislative scheme and impinges on no area fundamentally the concern of the states.

3. Plaintiff states a cause of action for damages under 18 U.S.C. & 1505. That statute punishes anyone who "injures any... witness in his person or property... on account of his testifying or having testified" before a committee

of the Congress. From this phraseology, it appears that plaintiff is a member of a class for whose especial benefit the statute was, at least in part, enacted. This conclusion is confirmed by the provision's legislative history. See S. Rep. No. 225, 79th Cong., 1st Sess. (1945); H.R. Rep. No. 1143, 76th Cong., 1st Sess. (1939); 84 Cong. Rec. 9312, 10910-12 (1939). The other factors listed in Cort v. Ash, supra, are satisfied. Of particular significance is the fact that 5 U.S.C.A. & 7211 (1979 pocket part) and 18 U.S.C. & 1505 may not in the context of this case overlap in all pertinent respects; yet implication of a private damage remedy under the first provision but not the second would not seem to make much logical sense. Furthermore, the Supreme Court has emphasized that, in appropriate

circumstances, private damage remedies may be inferred from penal statutes. Wyandotte Transportation Co. v. United States, 389 U.S. 191, 201-02 (1967).

4. Plaintiff states a cause of action under D.C. law for intentional interference with (existent and prospective) economic advantage. Carr v. Brown No. 12922, slip op. at 8-10 (D.C. Ct. App. Nov. 24, 1978);Dunn v. Cox, 163 A. 2d 609, 611 (D.C. Mun. App. 1960); Alfred A. Altimont, Inc. v. Chatelain, Samperton & Nolan, 374 A.2d 284 (D.C. Ct. App. 1977).

5. Plaintiff states a cause of action under D.C. law for intentional infliction of mental distress by extreme and outrageous conduct. Clark v. Associated Retail Credit Men, 105 F.2d 62, 64-55 (App.D.C. 1939);Mosely v. Bank of Virginia, No. 5573-77 (D.C. Super. Ct. June 19, 1978).

B. The service of process effected on defendants Nixon and Harlow was proper, Fed. R. Civ. P. 4(d)(7), (e) & (f); D.C. Code && 13-423(a) (3), 13-424, 13,431; United States v. First National City Bank, 379 U.S. 378, 381 (1965), and this court has personal jurisdiction over those two defendants as well, see International Shoe Co. v. Washington, 326 U.S. 310, 316,-19 (1945);Briggs v. Goodwin, 569 F. 2d 1, 8-10 (D.C. Cir. 1977); D.C. Code & 13-423(a) (3); 2 Moore, Federal Practice 4.25(7).

C. Nixon

1. By reason of the doctrine of "fraudulent concealment," this suit is not time-barred as against defendant Nixon. Fitzgerald v. Seamans, 553 F. 2d 220, 228-29 (D.C. Cir. 1977). It was not until June 1978 that plaintiff discovered facts so sufficiently implicating Nixon

in the subject matter of this case as to meet the requirements of Fed. R. Civ. P. 11; with due diligence plaintiff could not have discovered these facts at any earlier date.

2. To establish either arguably applicable immunity defense, the President must show that he was acting "within the outer perimeters" of his responsibilities. Butz v. Economou, 46 U.S.L.W. 4952 (June 29, 1978); Barr v. Matteo, 360 U.S. 564 (1959); Expeditions Unlimited Aquatic Enterprises, Inc. v. Smithsonian Institution, 566 F.2d 289 (D.C. Cir. 1977) (en banc), cert. denied, 46 U.S.L.W. 3803 (U.S. July 3, 1978). At this state of the litigation, the Court cannot conclude that Nixon was acting within the outer perimeters of his duties when he performed the acts which the complaint alleges he performed.

a. There exist genuine issues of fact as to Nixon's conduct in connection with the subject matter of this suit.

b. By statute and regulation, the President had no authority to hire, discharge or interfere with the employment of an employee such as Fitzgerald. 5 U.S.C. & 7512 (1976); 10 U.S.C. & 8012(e); 5 C.F.R. & 6.3; Fitzgerald v. Hampton, 467 F.2d 755, 762 (D.C. Cir. 1972).

c. Other statutory provisions as well bar the President from doing what he is alleged to have done. 5 U.S.C.A. & 7211 (1979) pocket part); 18 U.S.C. & 1505.

Therefore, at this stage, the Court will not decide whether defendant Nixon may be protected by an absolute or qualified immunity defense.

3. The issues raised against defendant Nixon are justicable under Baker v. Carr, 369 U.S. 186 (1962). Arguments flowing from the separation of powers or resting upon the risks inherent in permitting civil damage actions against past or present Presidents for acts performed while in office are more appropriately addressed when determining the kind of immunity from suit which the President should enjoy.

D. Harlow

1. Plaintiff's claims against defendant Harlow are not time-barred. Only sometime after October 1977 did plaintiff find out about Harlow's conversations with Seamans during the spring of 1969. Fitzgerald Affidavit of July 5, 1978, 6; Mollenhoff Affidavit of Aug. 1, 1978, 7. Plaintiff could not have with due diligence discovered this information prior to that date.

2. Genuine issues of fact remain as to the scope of Harlow's responsibilities, as to the nature of his actions in the Fitzgerald matter beginning in the spring of 1969, and as to whether such actions as he did take were performed in good faith. Accordingly, summary judgment cannot be granted at this time to defendant Harlow based on any claim of immunity, whether he be entitled to assert an absolute or qualified immunity.

E. Butterfield

1. Plaintiff's claims against defendant Butterfield are not time-barred. Discovery has not revealed any further information bearing on plaintiff's due diligence since the opinion of the Court of Appeals in Fitzgerald v. Seamans, supra.

2. Genuine issues of fact remain as

to the scope of Butterfield's responsibilities, as to the nature of his actions in the Fitzgerald matter beginning in the spring of 1969, and as to whether such actions as he did take were performed in good faith. Accordingly, summary judgment cannot be granted at this time to Butterfield by reason of any immunity defense, whether he be entitled to claim an absolute or a qualified immunity.

ORDERED that defendant's motions to dismiss or, in the alternative, for summary judgment are granted in the following respect

Plaintiff's action against defendant Haldeman is time-barred. The statute of limitations was no longer tolled by operation of the "fraudulent concealment" doctrine once plaintiff had sufficient facts to put him on notice that he had a

potential claim. See Emmett v. Eastern Dispensary & Casualty Hospital, 396, F.2d 931, 937-38 (D.C. Cir. 1967); Westinghouse Electric Corp. v. City of Burlington, Vermont, 351 F.2d 762, 764 (D.C. Cir. 1965); Cole v. Kelley, 438 F. Supp. 129, 139 (C.D. Cal. 1977). Plaintiff filed his First Amended Complaint naming Haldeman on June 27, 1977. Plaintiff, however, knew that Haldeman was actively involved in the Fitzgerald matter after having taken the deposition of Butterfield on June 15, 1974. See Butterfield deposition at 260, 271, 298, 324. See also Butterfield Memorandum of Jan. 20, 1970, addressed specifically to Haldeman (Discovered by Plaintiff in August, 1973).

ORDERED that, plaintiff having withdrawn his claim under the Ninth Amendment to the United States

Constitution, his claim for unconstitutional and common-law invasion of privacy, and his claims under 42 U.S.C. && 1985(3) & 1986, these claims be and hereby are dismissed; and it is further

ORDERED that, since the issue is currently before the Supreme Court, see Davis v. Passman, 571 F.2d 793 (5th Cir. 1978) (en banc), cert. granted, 47 U.S.L.W. 3301 (U.S. Oct. 20, 1978), of whether or not, under the rationale of Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, supra, a private damage remedy may be based on a Fifth Amendment violation, this Court will not now decide whether plaintiff states a cause of action under the Fifth Amendment.

/s/ GERHARD GESELL

United States District Judge

April 26, 1979

APPENDIX D,

"GAME PLAN"

"SPEAR CARRIERS"

COPY OF HANDWRITTEN INTERNAL

GOVERNMENT DOCUMENT

DISCOVERED MARCH 1981

Aug. 7, 1973 Telcon - 3703

FROM: Strohmenger (AVN 998-1595)

(a) Sec bought Game Plan

(b) Strohmenger must prepare a massive "paper" to pass through General Cheney and General Foster at Fort Monmouth. A copy of this "paper" will be flown to AMC tomorrow.

(c) ECOM "game plan" is to negotiate with Contractor NLT Friday of this week, 10 Aug. 73.

(d) ECOM wants Fallon (ACO) at Ft. Monmouth for preliminary briefing on Thursday 9, Aug. 73 and to set in on the negotiation on Friday.

(e) STOP Work Order will have t/b agreed by K-since not in Contract.

FALLON: Questions to Strohmenger

When will Contractor be contacted?

Gen. Cheney (or his office) will do so to-morrow or following day.

(a) Bob Wacks (Our Hdq) advised us this morning of

(1) Phelan meeting 1100 today

(2) Possible Conte meeting tomorrow DCASR Boston thinks "spear carriers" meetings s/b completed (successfully) before such actions.

(b) ECOM would also like a pricing man from DCASR Bos or DCAA "who knows the situation at Futuronics" to acompany ACO. ACO said he would call Strohmenger back. Reviewed above w/Col. Packard and H. Sullivan in L/Col Packards

Aug. 7, 1973 - Telecon approx 1100 hours

Bob Wacks CAS to F.T. Fallon & Herb Sullivan.

(1) Mr. Huggerd agrees to try Gen McKeen approach.

(2) Blair (AMC legal) meeting 11 o'clock today in/Mr. Phelan, Minority Counsel to Sel. Com for SB.

(3) Possible meeting to-morrow w/Mr. Conte.

(4) DCASR Bos should not contact

(a) DCAA

(b) DCASD, Garden City, LI,

until "spear carriers" have okayed (or at least not objected to) the McKeen approach.

(5) Bob Wacks inquiry (presumably for Bert Blair): Does DCASR Boston still lack information from contractor to support Prog. Payments in house? DCASR Boston answer: Yes, the information has not y